

Application No. 08/716,169
Paper dated: August 13, 2008
Response to Office Action dated May 14, 2008
Attorney Docket No. 0470-961125

REMARKS

According to the Office Action of May 14, 2008, claims 24-26 and 28-32 have been restricted into species, wherein each species is direct to one peptide selected from the group consisting of PLXIIAE, LXIIAED, XIAEDV, IIAEDVX, IAEDVXG, AEDVXGE, DVXGEAL, VXGEALS, XGEALST, GEALSTL, EALSTLV, ALSTLVVALSTLVX, LSTLVXN and STLVXNX. Applicants provisionally elect the peptide of LSTLVXN with traverse.

In the Amendment of February 22, 2008, Applicants amended claim 24 as follows:

A method of treatment of or protection against an inflammatory disease wherein the disease is Th1 mediated, comprising administering an effective amount of a peptide of 7-30 amino acids having the sequence of a part of the amino acid sequence of a mycobacterial protein having a conserved mammalian stress protein homologue, said part comprising at least 5 amino acids which are identical with the corresponding amino acids in the same relative position in one of derived from the sequence sequences 81-100 and 241-270 of SEQ ID NO. 1 representing the sequence of the stress protein hsp65 of *Mycobacterium tuberculosis*, wherein at least a portion of the peptide comprises a sequence selected from the group consisting of PLXIIAE, LXIIAED, XIAEDV, IIAEDVX, IAEDVXG, AEDVXGE, DVXGEAL, VXGEALS, XGEALST, GEALSTL, EALSTLV, ALSTLVV, LSTLVXN and STLVXNX, and wherein X is any amino acid at least 4 consecutive amino acids of said at least 5 amino acids being identical with the corresponding mammalian stress protein amino acids.

The amendment of claim 24 was to further define that which claim 24 already encompassed – the peptide. Thus, claim 24 previously recited and still recites a peptide of 7-30 amino acids derived from the sequence 241-270 of SEQ ID NO. 1. Even though the recited portions of the peptide were encompassed by the previous version of the claim, the Patent Office did not restrict the claims until now. Therefore, each of the recited portions are, nevertheless, directed to the same inventive concept.

Furthermore, Applicants respectfully request that the restriction be withdrawn because new claim 36 is directed to a combination of two peptides; each peptide comprising a different portion. Thus, examination of claim 36 includes searching for combinations of two peptides with two different portions. Since a search of each recited portion is necessitated by claim 36, it would not unduly burden the Patent Office to conduct the same search for claim 24.

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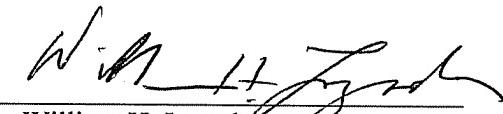
Finally, “[i]f the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require provisional election of a single species” (MPEP § 803.02). In this case, the Marush group recites sufficiently few species and they are related. Even assuming that the species are independent and distinct, according to MPEP § 803.02, a provisional election of a single species should not be required.

In view of the foregoing, Applicants respectfully request that the restriction requirement be withdrawn, and that pending claims 24, 28, 29, and 31-36 be reviewed on their merits, and allowed.

Respectfully submitted,

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